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NO. 283

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

A MOTION THAT THE COURT RECEIVE INFORMATION ON A RECENT DECISION IN THE SUPREME COURT OF OHIO

DONALD F. KNOX
Petitioner

vs.

THE STATE OF OHIO
Respondent

Donald F. Knox
127 W. Northwood Ave.
Columbus, Ohio

Petitioner

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MOTION

The petitioner respectfully requests that the Court receive information concerning a decision in the Supreme Court of Ohio on May 17, 1967 in the Matter of the Appeal of John L. Crabtree et al. from a Decision of the State Personnel Board of Review. The appellant did not know about the decision in time to cite it in the Petition.

MEMORANDUM IN SUPPORT OF MOTION

The decision of December 13, 1966 in the Crabtree case by the Court of Appeals of Franklin County, Ohio was cited in the Petition (p. 6). On the following day, December 14, 1966, the Supreme Court of Ohio overruled petitioner's motion to certify. A motion for rehearing was then filed with the latter court based upon the denial of equal protection of the law resulting from the above cited decision in the Crabtree case by the Court of Appeals since the latter decision was believed contrary to the decision by the same court on May 3, 1966 in the petitioner's case. The motion for rehearing was overruled, and an appeal was made to this Court.

The Court of Appeals had held on May 3, 1966 that the petitioner, having been an unclassified employee, had no right to bring before the State Personnel Board of Review the question as to whether or not he had been improperly carried in the unclassified service and thus dismissed the appeal. But in the Crabtree case, the same court on December 13, 1966 remanded the case of several unclassified employees to the Board for reason that they should have been carried in the classified service and thus should have had an opportunity to appeal to the Board on the merits of their dismissals. In that manner, the Court of Appeals affirmed said right of an unclassified employee which it

had denied to the petitioner.[1] The Board and the Common Pleas Court had earlier recognized such a right by hearing the appeal on the question of the appellants' unclassified status but had dismissed it for the reason that the appellants had been correctly carried in the unclassified service and thus had no right to appeal further on the merits of their dismissal.

On May 17, 1967 the Supreme Court of Ohio, as cited above, overruled a motion to certify in the Crabtree case that had been filed by the appellee, the Department of Natural Resources, in opposition to the decision of the Court of Appeals of December 13, 1966. As a result, the entire laboring class was transferred to the classified service from which they had been illegally excluded for over forty years.[2]

As a result of this recent decision of the Supreme Court of Ohio in the Crabtree case, the earlier decision of the Court of Appeals in the same case was allowed to stand and said right of an unclassified employee to appeal the question of his unclassified status was more firmly supported. The Supreme Court of Ohio obviously does not affirm every decision of the lower court upon overruling an objecting motion to certify, but such would seem the case in this instance in which the decision of the Court of Appeals in the Crabtree case was of such great public importance. The Court ruled as it did because it supported the decision of the Court of Appeals and the theory contained therein regarding said right of an unclassified employee.[3]

In concluding this motion, the petitioner wishes to inform the Court that there was an earlier decision

by the Supreme Court of Ohio on June 15, 1966 that also in effect overruled the decision of May 3, 1966 by the Court of Appeals in the petitioner's case. That decision was in the case of State, ex rel. Bingham v. Riley, County Eng., 6 Ohio St. 2d 262 wherein twenty-one unclassified employees appealed their dismissals to the State Personnel Board of Review on the basis they had been improperly left in the unclassified service and were thus denied protection of the civil service law in the matter of their dismissals. The Board found that they should have been in the classified service and ordered that they be returned to their jobs with back pay. The appellee then appealed untimely and to the wrong common pleas court, with the appeal being dismissed. The appellee continued to ignore the Board's order, and the appellants sought a writ of mandamus in the Court of Appeals of Lake County, Ohio.

The latter court on December 13, 1965 sustained the appellee's demurrer and denied the writ for the reason that the appellants had been in the unclassified service and had no right to bring before the Board the question of their unclassified status, based upon Section 143.012, Revised Code and upon State, ex rel. Baker v. Wichert, Mayor, 159 Ohio St. 50 (1953) which were the identical grounds upon which the Court of Appeals of Franklin County, Ohio dismissed the petitioner's appeal on May 3, 1966.[4] The appellants then appealed to the Supreme Court of Ohio, and that court on June 15, 1966 ordered that the writ of mandamus be issued for reason that the order of the Board was res judicata and not subject to the collateral attack in the form of demurrer to the petition for the writ because the appellee had failed to appeal timely from the decisions of the Board and the Common Pleas Court.

The appellant contends that this action by the Supreme Court of Ohio on June 15, 1966 affirmed the right of the Board to hear an appeal from an unclassified employee on the question of his unclassified status (the converse of said right of an unclassified employee as treated above) for reason that the order of the Board could not have been res judicata unless the Board had had the authority to issue it, that in turn was based upon said right to hear such an appeal. Had the Board not had such a right, then its order returning the twenty-one employees to their jobs would have been a nullity from the outset.

Based upon the above, the appellant contends that the decision in the Bingham case on June 15, 1966 did in effect overrule the decision of May 3, 1966 by the Court of Appeals in the petitioner's case; therefore, as of June 15, 1966, the petitioner became subjected for the first time to a denial of equal protection of the law resulting from the decision of the Court of Appeals on May 3, 1966. The petitioner was denied protection of the civil service law in appealing the question of his unclassified status whereas Bingham et al. were granted such protection.[5]

Respectfully submitted,

Donald F. Knox
Petitioner

FOOTNOTES

[1]For a more complete analysis of the comparative aspects of the Knox and Crabtree cases see the "Motion that the Court Receive Information on Certain Ambiguous Statements ..." as submitted to this Court.

[2]See the decision in the Crabtree case by the Court of Appeals as contained in the Appendixes accompanying the Petition, last par. of p. 17 and p. 18.

[3]The right of an unclassified employee to appeal the question of his unclassified status under the provisions of the civil service law has been upheld in several cases over the years; examples are cited in "Appendix B Accompanying the Motion that the Review ... be Delayed ...," p. 12.

[4]For analysis of those grounds, see ibid., p. 9.

[5]The petitioner asked his former attorney to make this point about the Bingham case to the Supreme Court of Ohio; the attorney first stated that such would not be a valid argument, but after the appeal to that court was dismissed he admitted that such an argument was valid. See ibid., p. 11.